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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,522	06/24/2003	James Yi	K0347.10U	2196

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ROGERS TOWERS, P.A.  
1301 RIVERPLACE BOULEVARD, SUITE 1500  
JACKSONVILLE, FL 32207

EXAMINER
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COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/602,522

Applicant(s)

YI ET AL.

Examiner

David Comstock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-13 and 15 is/are rejected.
- 7) ☒ Claim(s) 9, 10 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Chaux (4,852,552; cited by applicant).

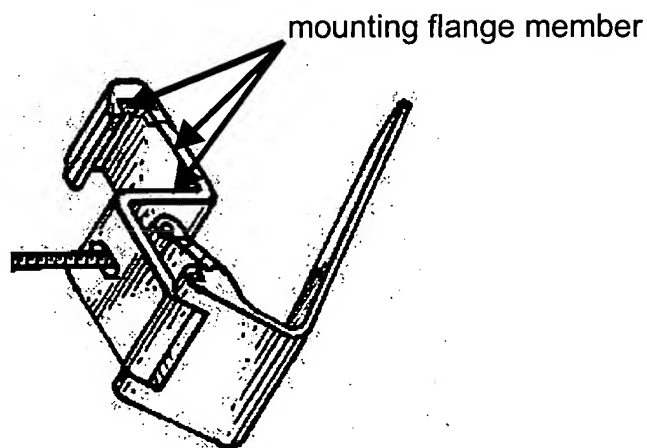
Chaux shows a device comprising a main body having a generally C-shaped configuration, the main body comprising a foot member 10, an elevation wall member 26, 8, 32, a mounting flange member 12 and a pair of extended hook members 22, 24 (see Fig. 1). The elevation wall member comprises an upper wall member 32 joined thereby to a lower wall member 26. The upper wall member 32 is joined to the flange member 12 and the lower wall member 26 is joined to the foot member 10 along a radiused junction (see Fig. 2, showing analagous radiused junction 38, 44). The pair of extended hook members 22, 24 are mounted to the mounting flange member 12 and each comprises a hook end and a body portion (see Fig. 3). An edge flange member 20 is joined to the foot member 10 along a radiused junction between tab members 78 and the apertures in member 80 (cf. Figs. 3 and 4 and see col. 4, lines 17-41). The hook members 22, 24 are adjustably mounted to the mounting flange member 12 by

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positioning means comprising the apertures in member 80 and the tab members 78 (id.), as well as by threaded apertures with mechanical fasteners 62, 84 (see Fig. 3).

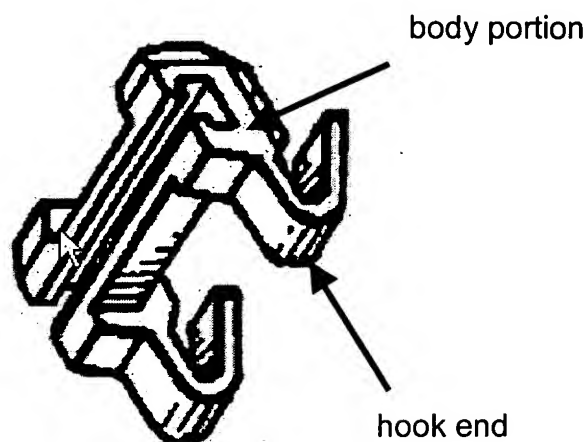
Claims 1, 3 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Koros et al. (5,908,382; cited by applicant).

Koros et al. disclose a retractor device comprising a main body 28 having a generally C-shaped configuration comprising a foot member 54, an elevation wall member 44, 46, a mounting flange member, and a pair of extended hook members 38 mounted to the flange member (see Figures 1 and 5 and supplemental Figure A below).



**Figure A**

The elevation wall member 44, 46 comprises an upper wall member 44 joined to a lower wall member 46 along a radiused junction (see Figs. 5 and 7). The lower wall member is joined to the foot member and the upper wall member is joined to the flange member. The pair of extended hook members each comprise a hook end and a body portion (see, e.g., Fig. 5 and supplemental Figure B below).



**Figure B**

A chest retractor 10 comprising a generally L-shaped body member comprises a fixed arm member 16 and a retractor hook member 15. A rack member 12 is joined to the fixed arm member. The main body 28 is joined to the rack member via an adjustment mechanism 22 that allows the distance between the fixed arm and the main body to be varied (see, e.g., Fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koros et al. (5,908,382; cited by applicant).

Koros et al. disclose the claimed invention including angular relationships that appear to be very close to those set forth in the claims. Nevertheless, Koros et al. do not explicitly disclose a 90° internal angle between the foot member and lower wall member, a 122° internal angle between the upper wall member and the lower wall member, a 90° interior angle between the upper wall member and the flange member (claim 7), and the flange member being disposed at a 32° angle from vertical relative to a horizontal foot (claim 11). However, it would have been obvious to have provided the device with a 90° internal angle between the foot member and lower wall member, a 122° internal angle between the upper wall member and the lower wall member; a 90° interior angle between the upper wall member and the flange member, and the flange member being disposed at a 32° angle from vertical relative to a horizontal foot, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koros et al. (5,908,382; cited by applicant) in view of Gauthier (3,168,093).

Koros et al. disclose the claimed invention except that a single retractor hook 15 is disclosed instead of a pair of hooks. Gauthier shows a retractor 10 having a single hook 48 but teaches providing a pair of hooks instead of only one in order to more precisely apply the traction load around the incision and have better results (see Fig. 1 and col. 4, lines 54-57). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the retractor device of Koros et al. with a pair of retractor hooks instead of a single hook, in view of Gauthier, in order to more precisely apply the traction load around the incision and have better results.

***Allowable Subject Matter***

Claims 9, 10 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 16 is allowed.

The following is a statement of reasons for the indication of allowable subject matter:

**Chaux:**

With regard to claims 9 and 10, there is neither art nor motivation to provide the device of Chaux with the claimed dimensions and angular relationships, which differ substantially from those shown in Chaux.

With regard to claim 14, the various elements of Chaux already satisfy the limitations of claim 1 and cannot be concurrently applied as a chest retractor comprising the L-shaped body, and so forth.

Koros et al.

With regard to claims 2, 8, 9 and 10, Koros et al. has not been modified to include an "edge flange member joined to [the] foot member" (claim 2) because the foot member of Koros et al. has a specific configuration to allow placement along an artery (see, e.g., col. 2, lines 47-54). Modifying the shape of the foot member could be expected to present risks to the artery. Accordingly, the reference is considered to teach away from modification in this manner. Moreover, no art was found to teach or suggest this modification.

Regarding claim 14, Koros et al. do not disclose a pair of arm hook members *and* extended hook members on the adjustable arm. It is noted that if the extended hook members 38 were considered to be the pair of arm hook members, there would no longer be any extended hook members, as required by the claim.

Chaux or Koros et al.

Method claim 16 requires positioning a foot member of the main body on a chest wall and positioning arm hook members on the mounting flange between the extended hook members, neither of which are disclosed in either of these references.

No other prior art of record discloses or renders obvious the features and claims that have not been rejected.



### ***Response to Arguments***

Applicant's arguments filed 08 May 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the cited art does not disclose a lifting tool for use with a chest retractor, it is noted that the limitation in the preamble pertaining to the intended use with a chest retractor does not "breathe life and meaning" into the rejected claims and has not been given patentable weight. This is in contrast to, for example, claim 14, which positively recites the retractor and has been indicated as containing allowable subject matter. Moreover, it is possible and not uncommon to use more than one retractor at a surgical location, therefore, it is not unreasonable to characterize the device as a lifting tool, which is capable of being used with a retractor. If the prior art structure is capable of performing the intended use, as it is here, then it meets the claim. It is also noted that the functionality need not be optimal.

With regard to applicant's arguments regarding the definition of "main body," the structure set forth in the claim satisfies this broad language. It is noted that the specification must clearly set forth the definition explicitly and with reasonable clarity, deliberateness, and precision. Exemplification is not an explicit definition. *Even explicit definitions can be subject to varying interpretations (emphasis by Examiner).* See *Teleflex, Inc. v. Ficosa North America Corp.*, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001), and MPEP 2111.01. Likewise, applicant has not presented any persuasive reasoning why the art cannot be characterized as comprising a C-shape.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER